

**REMARKS**

Reconsideration and allowance are respectfully requested.

Claims 1-10 are pending. Applicants acknowledge the Examiner's withdrawal of the rejections made in the first Office Action.

Claims 1-10 were rejected for obviousness-type double patenting as being allegedly unpatentable over claims 1 and 3 of Patent No. 7,130,758. Applicants traverse based on the submission of the attached Terminal Disclaimer.

It should be noted that the filing of a terminal disclaimer to overcome a rejection based on non-statutory double patenting is not an admission that the rejection was proper. See *Quad Environmental Technologies Corp. v. Union Sanitary District*, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991). The Court stated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Thus, submission of a terminal disclaimer is not an admission that the pending claims are obvious over the claims of Patent No. 7,130,758.

Withdrawal of the double patenting rejection is requested.

Having fully responded to the Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

  
Gary R. Tanigawa  
Reg. No. 43,180

901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100